

VPH

IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6763 OF 2006

- 1) B. K. Bhosale, Age 37)
years, residing at)
RB-I 550/10, Tadiwala)
Road, Pune 411 001.)
)
- 2) Balaram Narsamma,)
residing at RB-I 2/1,)
Chinchwad Station,)
Pune 411 019.)
)
- 3) S. P. Kusare, residing)
at : Bldg No.2, Block)
No.2, Dashrath Nagar)
Murde Khurd, Karjat,)
District : Raigad)
)
- 4) P.E. Wandre, having his)
address as : C/o.Station)
Superintendent, Chembur)
Railway Station, Chembur)
Mumbai.)
)
- 5) K.G. Rane, Residing at)
Plot No. 18 1385, Karuna)
Niwas, Bhangarwadi)
Lonawala, taluka Maval,)
District Pune.)
)
- 6) Ganesh A. Rajput,)
residing at : Plot No.)
18, Sharda Niwas,)
Bhangarwadi Lonawala)
Tal. Maval, Dist. Pune)
)
- 7) R. G. Bhalerao,)
Residing at : Type 15,)
Swaraj Nagar, Lonawala)
Tal. Maval, Dist. Pune)
)
- 8) Prakash Keshav Patel)
Residing at : R.No.403)

- Ramamurthy Apartments,)
Thakurli (East)) ... Petitioners
Dist. Thane 421 203)
)
9) Rajappa Sabanna)
Residing at : C/o.)
Rajappa S. Doddamani,)
Room No.8, Shri O.M.)
Trimurthi CHS Ltd.,)
Ramesh Wadi)
Badlapur (West))
)
10) S. S. Paisadeli)
Residing at : RB-II/A)
Block, Room No. 15)
Tadiwala Road,)
Punw 411 001.)
)
11) B.D. Bansod,)
Residing at : Railway)
Quarter No.JT SUB C-8)
near Railway Station,)
Panvel.)
)
12) Vilas S. Deshmukh)
Residing at : Vikas)
Nagar, Netke Colony)
Dehuroad, Pune 412 113)
)
13) Navin N. Joshi,)
Residing at : 122,)
Kalakal Mala, near)
Swaraj Nasgar, Lonavala)
Tal. Maval, Dist. Pune)
)
14) Baliram K. Kene,)
Residing at : Nimbarli)
Post : Khandavali, Tal)
Kalyan, Dist. Thane.)
)
15) Mohan S. Netwate,)
Residing at : Railway)
Quarter No.RB-II/31/2)
Near Civil Court)
Igatpure, Dist. Nasik)
)
16) S.S. Bharit,)
Residing at : Dak)
Bangla Road, near)

Holiday Home, behind)
M & M Club, Igatpuri)
District : Nasik.) ... Petitioners

- 17) Ganapathy Shanmugam,)
Residing at : A-13,)
Door Sanchar C.H.S.)
near Kidland High)
School, Kopar Road)
Dombivali (West))
- 18) V.D. Pande,)
Residing at : Kalaa)
Talao, near Mounibaba's)
Samadhi, Kalyan,)
District Thane.)
- 19) S.B. Pathan,)
Residing at : Opp. Bank)
of Maharashtra AT & PO)
: Kesar (East), Taluka)
Shahapur, Dist.-Thane)
- 20) Panchdev Bhulan)
Residing at : Opp.)
Yashoda Niwas, Chitta-)
-ranjan Nagar, R. N.)
Gandhi Road, Mumbai-77)
- 21) R.S. Kori,)
Residing at : Railway)
Quarter No. K/70 Karjat)
Post : Gundge-410 201)
District : Raigad)
- 22) R.K. Sharma,)
Residing at : Block 6)
Igatpuri, Dist. Nasik)
- 23) I.R. Khan,)
Residing at : Railway)
Quarter No. RB/I/1014/8)
Waldhuni, Kalyan.)
- 24) V.D. Gulumkar,)
Residing at : Flat)
No. 16, Mahalaxmi)
Chambers, Rao Colony,)
Talegaon Dabhade)

- Dist. Pune.)
)
25) R. N. Gunjal,)
Residing at : Railway)
Quarter No. G/1 Dapodi)
Railway Station, Dapodi .. Petitioners
Pune.)
)
26) Jaywant Shivram Pawar)
Residing at : 1193/3,)
Amartesh Temple, Khandge)
Colony, Talegaon, Tal.)
Maval, District Pune)
)
27) M. A. Shaikh,)
Residing at : B/4 /106)
"Lok Surabhi", near)
Patri Pul, Kalyan (W))
)
28) P.R. Kori, C/o.Station)
Master Thane, Central)
Railway Thane.)
)
29) Dilip Thorat,)
Residing at : At & PO)
Vashind (E), Taluka)
Shahapur, Dist. Thane.)
)
30) Smt. Asha Pekhale)
Residing at : Omkar)
Apartments, Shivaji)
Nagar, PO: Vashind)
Tal. Shahapur,)
District Thane)
)
31) Devshi Rafial,)
Residing at : R.No.17)
Shivpuri Apartments,)
Kalyan (E) 421 306.)
)
32) R.S. Mahale,)
Residing at : Tamboli)
Chawl, Laxmi Baug)
Katemanivali, Kalyan(E))
)
33) Smt. Ratnaprabha Doke)
Residing at : R No.301)
"B" wing, Alankar)
Apartments, near Venus)

- Cinema, Ulhasnagar-4)
)
34) Premchand Shemwal,)
Residing at : Railway)
Quarter No.RB-I/A/15)
Central Railway Colony))
Turbhe, Vashi,)
Navi Mumbai 400 705.) ... Petitioners
)
35) A. N. Kulkarni, C/o.)
Station Master Ghatkopar)
Station, Central Railway)
Ghatkopar.)
)
36) Vilas Kange,)
Residing at : Bldg.)
No.2, Block No.15,)
Girna Apartments, near)
Jorkere Talkies)
Kalyan (West))
)
37) Smt. Sapna Gawai,)
Residing at : Room)
No.1, Police Patil)
Chawl, Plot No. 135,)
Sector 14, New Kulshet)
Gaon, Nerul,)
Navi Mumbai 400 706.)
)
38) Jayantri Jaiswal,)
Residing at : No.27,)
C.P. Talao Road, behind)
Sion Garage, Wagale)
Estate, Thane.)
)
39) B. A. Gaikwad,)
C/o. Station Superin-)
-tendent, Chembur)
Station, Chembur Mumbai)
)
40) J.N. Singh,)
Residing at : Room No.)
30, Jay Ambe Society,)
Indira Nagar, Rupa Devi)
Pada No.2, Road No.22)
Ambedkar Chowk, Wagle)
Chowk, Wagle Estate)
Thane - 4.)
)

- 41) K.P. Joshi, C/o. R.K.)
General Store, Road)
No.03, Park Side)
Vikroli(W), Mumbai-79)
)
- 42) Kishor Salunke, C/o.)
Station Master, Panvel)
Railway Station, Central)
Railway, Panvel.) ... Petitioners
- 43) Chandrashekhar Kulkarni
Residing at : C/47,)
Room No. 174, Shiv)
Colony, Ulhasnagar - 3)
)
- 44) R. M. Dharmadhikari,)
Residing at : Railway)
Quarter No.RB-II/D-14)
Takka Railway Colony,)
Panvel.)
)
- 45) Mrs. Sudh Dwivedi)
Residing at : Railway)
Qtr. No.MS/RB-II/7/20)
Railway Colony, Juinagar)
Navi Mumbai.)
)
- 46) V. N. Kulkarni,)
Residing at : E-3,)
Surnihar Complex, near)
Nagar Parishad Office)
Badlapur (E) 421 503)
)
- 47) S. Udaykumar,)
Residing at Railway)
Quarter No.MB/29)
Central Railway,)
Ambernath (E))
)
- 48) Rajkumar Ahirwar,)
Residing at : Railway)
Qtr. No.MS RB-1/108/4)
New Railway Colony)
Kurla (East), Mumbai 24)
)
- 49) Mrs. Asha Jadhav,)
Residing at : Near)
Godrej Park, Kalyan,)
District Thane.)

- 50) P.N. Kadam,
Residing at : Bldg No.1
"C" Wing, Room 111
Sharda Co-Op. Society
Kalachowki, Mumbai-33
- 51) T.K. Yadav,
Residing at : R.No.120
Kherwadi Railway Quarter
Bandra (E), Mumbai 51 ... Petitioners
- 52) Salim Shaikh, C/o.
Station Master, Warali
Station, Central
Railway, Warali.
- 53) B. R. Jaiswa,
Residing at : Room
No.47, Chawl No.1,
Bharatiya Nagar Vinoba
Bhave Marg, Kurla (W)
Mumbai 400 070.
- 54) M. N. Waidone, C/o.
Advocate J.M. Tanpure
Talegaon Dabhade, Tal.
Maval, District Pune
- 55) S. S. Indulkar, C/o.
Station Master, Igatpuri
Station, Central Railway
Igatpuri, Dist. Nasik
- 56) K.G. Dighe,
Residing at : Railway
Qtr. No. RB-I/C-1
Section Takka, panvel
- 57) R.N. Kadam,
Residing at : 4/58,
Kannamawar Nagar No.1,
Vikroli (E), Mumbai-83
- 58) Girish A. Sadre,
Residing at : Amrut
Nagar, Darga Road,
Mumbra 400 612
District : Thane.

- 59) M.W. Gangurde,)
Residing at: R.No. 9,)
Second Floor, Bldg.)
No. B/38, Gurukrupa)
Co-Op. Hsg. Society,)
Sector 10, Sanpada,)
Navi Mumbai.)
)
- 60) S.H. Bhosale, C/o. N.P.)
High School, Shivaji)
Peth, Khandala, Taluka)
Maval, Dist. Pune.) ... Petitioners
- 61) B. S. Dhuri,)
Residing at : 1/4,)
Anant Niwas, C.H. Society)
Chakki Naka, Kalyan(E))
District : Kalyan.)
)
- 62) V. Khadevale, C/o.)
Station Master, Ch.)
Terminus, Central)
Railway, CSTM, Mumbai-1)
)
- 63) V.G. Bendre, Residing)
at : R.No.11, "A",)
Ganesh Nagar, Veer)
Savarkar Road, Virar-E)
Mumbai.)
)
- 64) G.K. Zomte,)
Residing at : AT :)
Thawale, Post : Vangni)
Taluka - Ambernath,)
District : Thane.) ... Petitioners

Vs.

- 1) Union of India, through)
General Manager,)
Central Railway, Head)
Quarters Office,)
Mumbai CST, Mumbai-1)
)
- 2) Divisional Railway)
Manager (P), Mumbai)
Division, Central)
Railway, DRM's Office)

- Mumbai CST, Mumbai - 1)
3) Divisional Railway)
Manager (P), Pune Divn)
Central Railway, DRM's)
Office, Pune 411 001.)
4) Government of India,)
Ministry of Railways,)
Through Joint Director)
(NG), Railway Board,)
Railway Bhavan,)
New Delhi 110 001) Respondents.

Mr. Rahul G. Walia i/b G.D. Wadia, Advocate
for the petitioners.

Mr. Sureshkumar, advocate for respondents.

CORAM: F.I. REBELLO,
AND
R. V. MORE, JJ.

DATE : JANUARY 24, 2007.

ORAL JUDGMENT [PER. F.I. REBELLO, J.] :

. Rule. Heard forthwith. The petitioners are aggrieved by the order dated 3rd August 2006 passed by the Central Administrative Tribunal, Bombay Bench at Mumbai. Petitioners are presently working as announcers in the establishment of the Central Railway. They have approached the Tribunal amongst others for the following reliefs

(a) For the direction to the Respondents that Announcers cadre be

defined/formulated with promotional prospect / avenues (by defining the criteria of the promotions, alternatively.

(b) Respondents be directed to merge the announcer's cadre with Ticket Collector's Cadre or with Commercial Clerks Cadre etc.

(c) The respondents be directed to take steps for the formation of separate cadre of the Announcers with the channel of promotions to the higher grade, or

(d) The respondents be directed to take steps for the merger of Announcers cadre with other department of Railways like commercial or operating Department.

(e) Any other just and equitable orders may be passed.

. The learned Tribunal by the impugned order was pleased to hold that posts of announcers is an Ex-cadre post and lien of the employee working in

those posts, is maintained in their parent cadre. Further, the posts of announcer is not declared as permanent cadre yet. The learned Tribunal also based on the documentary evidence produced before it held that the seniority of employees selected for the post of announcer on temporary and ad-hoc basis in commercial department is to be maintained at their respective cadre. The Tribunal held that person working against the ex-cadre post of announcer does not have a lien in the Commercial Department and cannot be considered for promotion in that department. Only those Group D staff of Commercial Department working as announcers on ad-hoc basis in the ex-cadre post and eligible for working in group post of TC/Commercial Clerk against the departmental quota, alone are considered for selection, since their seniority and lien is maintained in the commercial department. Others are not considered since their lien and seniority is maintained by the respective department which is not the commercial department. In the matter of a contention urged on behalf of the petitioners that some announcers were regularised, it was held that those were on the facts of those cases and there

is no general principle. Reliance is placed on various judgments. For all the aforesaid reasons, the learned Tribunal was pleased to hold that considering the issues involved and the law as declared by the judgments of the Supreme Court, the powers of the Tribunal are limited and no direction can be issued to lay down a policy for creation of promotional avenues. That is a matter within the purview of appropriate Government.

2. On behalf of the petitioners, the learned counsel submits that the learned Tribunal misdirected itself in law in not granting relief to the peittioners. It is submitted that the petitioners are working in Group C posts, for about 10 years as announcers. As this service is long and continuous , it cannot be termed as ad-hoc. The petitioners were selected by inviting applications from Group D staff and only after passing the selection process. Non regularisation of the petitioners in group C posts, it is submitted, is violative of Articles 14, 16 and 21 of the Constitution of India.

. On behalf of respondents, it is submitted

that appointment of the petitioners was purely on ad-hoc basis and the petitioners were aware of the same. There is no existing cadre. The petitioners are not holding regular posts and they are to be considered for promotion in their regular cadre, as and when they became eligible. Their seniority is also to be considered in the parent cadre. As there are no regular posts and no cadre, the question of regularisation of petitioners does not arise. It is further submitted that creation of posts or cadre is purely an administrative act of the respondents and no writ can go to the respondents on that ground. For all the aforesaid reasons, it is submitted that the petition filed by the petitioners challenging the order of CAT is not maintainable, as the order of CAT does not suffer from any error of law apparent on the face of the record. It is submitted that the petition be dismissed.

3. It is in that context that we shall have to examine the contentions urged on behalf of the petitioners.

. The posts of announcers carry the pay-scale of Group C post. Originally they could be filled in from employees working in Group C, who volunteered. The respondent railway board on 10-1-1991 had issued a circular for filling 20 vacancies of announcers from staff working in the groups 950-1500 (RPS) to Rs. 1600-2060 (RPS). Applications were also invited from Group D staff who had qualifications as set out therein. It was provided that the selected candidates will carry their grade and pay in their respective parent cadre and their seniority was to be maintained in their respective cadre in the parent department and they will continue to be considered for promotions in the parent cadre by virtue of their performance and position in their parent cadre during the period, they continue to work as announcer. The tenure period of one year could be extended at the discretion of the administration. Another circular came to be issued on 10-1-1996. It was noted that the Division was facing problems to fill in the posts of announcers from Group C staff and as such volunteers from Group D staff had to be considered. They, however, were drawing scales of Group D Staff. A policy decision was

therefore, taken that they would be paid in the Group C Scale. The circular made it clear that posting of persons working as announcers in Group C is purely on ad hoc basis and their seniority, promotion would be considered in the parent cadre for further promotion. The next circular was issued on 18-2-1999. Applications were invited from Staff working in pay scales 2750-4400 (RP) to 4000-6000 (RP). It was again reiterated that the selected candidates will carry their grade and pay enjoyed in their respective parent cadre. It was again reiterated that seniority, promotions, etc. would be in their parent cadre. A similar circular came to be issued on 4-12-2001. By another circular of 2003 vacancies of announcers were allowed to be filled in from Group C and Group D posts. It was made clear that selected candidates from Group D will be posted as announcers in pay scale 3050-4590 (RS RS) on purely ad-hoc basis, since it is an ex-cadre post. It was further clarified that the selected candidates will carry their grade, pay, seniority, promotion and pay fixation in their parent cadre and cannot be considered for further promotion. Similar circulars have been issued from time to

time. The last of the said circular brought to our attention was dated 2-6-2004.

. From the above circulars, it would be clear that even though group D employees were held eligible to be considered for appointment as announcers, for the purpose of seniority, promotion and other benefits, is in their respective cadre. There is no cadre of announcers. Neither have the respondents framed any rules for appointment / promotion to the said posts, but have issued instructions as to the minimum requirements for being considered / appointed. It is therefore, clear that those who have been selected as announcers continue to hold their lien in the parent department, even though they are working on promotion the post of announcers pursuant to their selection but on a purely temporary basis. In this context, the question arises as to whether impugned order can be said to suffer from any error of law apparent on the face of the record.

4. We had earlier noted the reliefs as prayed for by the petitioners in their Original

Application. The reliefs as sought for, are basically that the announcer's cadre be defined / formulated, with promotional prospects and for a merger of the announcer's cadre with TC cadre or with commercial clerks cadre and or in the alternate for formation of separate cadre of announcers with channel of promotions in higher grade. The further relief in the alternative was for merger of announcer's cadre with other department like Commercial or operating department. In the earlier part of our order, we have mentioned that there is no existing cadre of announcers and these ex-cadre posts are being filled in by inviting applications from those holding group C or group D posts with a clear understanding that these appointments are purely on ad-hoc / temporary basis and that the persons so selected will continue to hold lien on their regular post in their parent cadre. It is in this context, that the prayers need to be considered.

5. At the threshold we may point out that while exercising the extra ordinary jurisdiction of this Court, this Court cannot issue directions, or a writ by way of Mandamus to direct in what manner

the respondents should staff their administration or whether there should be new cadre or merger of cadre. That is purely an administrative function to be based on administrative exigencies and purely within the administrative power of the respondent. It is only in the event that any actions of the respondents are tainted with arbitrariness and or violative of Articles 14, 16 and to an extent Article 21 of the Constitution of India, will this Court intervene, to redress those grievances. At the highest in cases of palpable injustice, which is apparent, the Court may issue directions to the respondents for consideration, so as to remove the injustice and confirm to constitutional norms but within their administrative power. Beyond this, the writ court would not exercise its extra ordinary jurisdiction to issue any directions to the administrative authorities. The power of judicial review is not to be exercised to run administrations. Courts having no such expertise and unaware of practical realities and complications must confine themselves to exercise their jurisdiction in administrative matter where administrative result in affecting rights of employer or citizens.

6. In the instant case, petitioners who are before us are those who are holding permanent group D posts. In terms of the instructions issued, while considering them for being appointed as announcers, they had volunteered and were selected for their skills as announcers and their lien is maintained in their parent cadre. In other words, they already belong to a cadre to which they were originally appointed. In that context, the question of issuing directions to respondents to define or formulate the announcer's cadre will clearly not arise as that is purely an administrative act. The issue of non promotional avenue could have arisen, if there was a regular cadre with posts and there was no further promotional avenues available. In the instant case, this is not so. In our opinion, therefore, relief as prayed for in terms of prayer clause (a), cannot be granted. Once relief in terms of prayer clause (a) cannot be granted, similarly relief in terms of prayer clauses (b), (c) and (d) also cannot be granted, as they are inter related on the pre-supposition that there is no cadre. In that context, we are clearly of the opinion that

the order of CAT does not suffer from any error of law apparent on the face of record. Apart from that, it is not the case of petitioners that the learned Tribunal did not take into consideration any Rule, or Circular, having effect of law while passing the order. In our opinion, therefore, no case is made out for interference with the order passed by CAT.

6. The learned counsel for the petitioners had relied on the judgment of the Supreme Court in **N.S.K. Nayar and others, Petitioners Vs. Union of India and others, Respondents [AIR 1992 Supreme Court 1574]**. In that case, the appellants before the Supreme Court were appointed on officiating basis, considering that there was a rule to meet administrative exigencies. Those appointments continued for 10-15 years. It is in that context the Supreme court held that such appointment cannot to be held to be officiating, or temporary and in those circumstances, held that denial of right of regularisation and consequential benefits to such official /employee is arbitrary.

. Next reliance was placed in the judgment of **The Workmen of Bhurkunda Colliery of M/s. Central Coalfields Ltd. - Appellant Vs. The Management of Bhurkunda Colliery of M/s. Central Coalfields Ltd. - Respondent [2006(1)SCT 584]**. That was a matter under the provisions of Industrial Disputes Act, 1947. That ratio cannot be applied to those in employment of respondents, where there are service rules made in pursuance of Article 309 of the Constitution of India and or administrative instructions. It is open to Industrial Tribunal in exercise of the powers to pass such directions including to create new conditions of service and the like.

. The judgment in **Narendra Chadha & others, petitioners Vs. Union of India and others, respondents [AIR 1986 Supreme Court 638]** would not be of much assistance to the petitioners. In those case, appointments were done by following the rules, but allowed to function in higher posts for 15 to 20 years. It is in that context, the learned Supreme Court observed that such candidates holding posts cannot be treated as not belonging to the service.

. Reliance is also placed on the judgment in **State of Tripura and others, appellants Vs. K.K. Roy, respondent [(2004) 9 Supreme Court Cases 65]**. This is a matter of providing promotions in a post. The Apex Court has taken a view that in the life time of an employee, there must be at least two promotional avenues. Considering these observations in Government Services, for those persons in government service for whom promotions are not available, time bound promotion, have been provided, so as to obviate the difficulty arising of non consideration to promotional posts. That issue would have arisen if the posts of announcers were regular posts in a regular cadre and there were no promotional avenues. That is not the case here.

. In our opinion, the law laid down by the Supreme Court in all these judgments on the facts, as set out, clearly would not apply to the petitioners case herein.

7. Having said so, we find that the petitioners

have been working for about 10 years in the post of announcers continuously and drawing salary in group C pay-scale. On behalf of respondents, learned counsel points out to us that as and when vacancies for promotion arise in the parent cadre, those who are eligible among the petitioners are being considered. In fact about 16 announcers have been promoted as TC as they were in the Commercial Department. We think it appropriate in the circumstances that those working as announcers should be allowed to continue to work as announcers till such time, as they are selected by way of promotion towards group C posts in their cadre. We however, make it clear that this will be subject to any decision that may be taken by the respondents in the matter of abolition or reduction in the number of posts of announcers. Subject to that, petitioners should be allowed to continue to work as announcers. As noted by us earlier, it is not within the jurisdiction of this court in our extra ordinary jurisdiction, to issue direction to the respondents to absorb and regularise the announcers to the posts of announcers in the absence of a cadre. We may only point out to the Circular dated 16/23 September

2002, where respondents made it clear that in isolated cases where direct recruitment in the category of announcers has been made, the Ministry of Railway desired that the incumbents should be provided position against direct recruitment quota posts and that is linked with a relevant existing regular cadre. This would not apply to the case of petitioners, as they are holding lien on regular posts in group D. However, considering their long service and their demand for regularisation in group C post, if they are not promoted to group "C" post, within reasonable time, to consider making the posts permanent to them till such time they retire or are promoted by creating super-numerary posts, if possible.

. With the above observation, rule is discharged. There shall be no order as to costs.

[R. V. MORE, J.]

[F.I.REBELLO, J.]